

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA



In the Matter of the Appeal of }
TIDE WATER ASSOCIATED OIL COMPANY }

Appearances:

For Appellant: Robert M. Searls, Attorney at Law

For Respondent: W. M. Walsh, Assistant Franchise Tax
Commissioner; Rebard P. Smith,
Associate Tax Counsel

B P I N I O N

This appeal originally was made pursuant to Section 25 Of the Bank and Corporation Franchise Tax Act (Chapter 13, Statutes of 1929, as amended) from the action of the Franchise Tax Commissioner on the protests of Tide Water Associated Oil Company to proposed assessments of additional tax in the amounts Of \$67,478.81, \$55,313.84 and \$92,052.64 for the taxable years 1940, 1941 and 1942, respectively. Prior to the filing of the appeal, however, payments were made by the Appellant in partial satisfaction of the proposed assessments, the amounts remaining unpaid being \$26,720.54, \$25,383.79 and \$13,981.64 for those years, respectively. The Appellant subsequently paid such amounts and the appeal is, accordingly, to be considered, pursuant to Section 27 of the Act, as one from the denial of claims for refund.

The Appellant, a Delaware corporation with its main business office in New York City, carries on a nation wide integrated oil business. It produces and refines oil in several states and markets the refined products in the greater part Of the United States. In the course of its business it has borrowed money for general business purposes from banks and from its subsidiaries. The proceeds from the loans went into its general working capital and were not allocated to any particular investments or operations. The interest paid on these loans during each of the income years in question was less than the total amount received by it from dividends and interest not includible in the measure of the tax imposed upon it by the Act. In accordance with Section 8(b) of the Act, the Commissioner disallowed the deduction for interest claimed by Appellant for each year and the correctness of his action in so doing is the only issue remaining for consideration herein.

Section 8(b), as in effect during the period in question, in authorizing a deduction from gross income for interest, provided:

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"All interest paid or accrued during the income year on indebtedness of the taxpayer to the extent in excess of income of the taxpayer from interest and dividends (other than dividends deductible under the provisions of subdivision (h) of this section and other than dividends from corporations, 50 per centum or more of the outstanding stock of which is owned by the taxpayer), which is not included in the measure of the tax imposed by this act."

The Appellant does not contend that the action of the Commissioner in disallowing the interest deduction for each of the income years is not in accord with this provision of the Act. It concedes that its interest and dividends not includible in the measure of its tax exceed in amount the interest paid, but it argues that Section 8(b) as applied to its operations is unconstitutional in that

- (a) it requires in effect the levy of a tax on the gross income of a corporation engaged in interstate commerce; and
- (b) it constitutes double taxation of the interest paid by Appellant to California subsidiaries in which it owned more than an 80 per cent controlling interest and which was reported as a part of the gross income of said subsidiaries on their respective franchise tax returns.

Appellant is met at the very outset with the oft repeated rule of this Board that the question of "the constitutionality of a statutory provision is of such gravity that our action with respect thereto should be designed to afford an opportunity for judicial determination of the issue. In fact, one of the appeals in which this rule was most recently expressed involved the asserted unconstitutionality of Section 8(b). Appeal of American Insurance Agency, July 13, 1943. Although this question was presented to us some five years ago, so far as we are aware it has not been judicially determined. Consistently with our practice on constitutional issues, we must, accordingly, decline to consider the Appellant's position as respects Section 8(b).

Another issue originally presented by this appeal relating to the extent of the deductibility of certain dividends; under Section 8(h) of the Act, has been settled by a stipulation filed by the Appellant and the Commissioner on April 29, 1948. The terms of the stipulation are given effect in the order entered herein and make unnecessary the consideration of any question with respect to the allowance or disallowance of deductions for dividends under that Section.

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O R D E R

Pursuant to the views expressed in the opinion of the Board on file in this proceeding and the stipulation filed on April 29, 1948, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to Chapter 13, Statutes of 1929, as amended, that the action of Chas. J. McColgan, Franchise Tax Commissioner, on the protests of Tide Water Associated Oil Company to proposed assessments of additional tax in the amounts of \$67,478.81, \$55,313.84 and \$92,552.64 for the taxable years 1940, 1941 and 1942, respectively, that action to be regarded as the denial of claims for refund in the amounts of \$26,720.54, \$25,383.79 and \$13,981.64 for those years, respectively, in view of the payments made by said Tide Water Associated Oil Company in partial satisfaction of the proposed assessments prior to the filing hereof and the payment of the said amounts of \$26,720.54, \$25,383.79 and \$13,981.64 remaining due subsequent to the filing hereof, be and the same is hereby modified. It is hereby determined, pursuant to said stipulation, that said Tide Water Associated Oil Company made an overpayment of franchise tax for the taxable year 1940 in the amount of \$5,322.02 tax and \$1,820.55 interest and that there is due as interest on said overpayment of tax the sum of \$757.98, the total refund for said year being \$7,900.55; that said Company made an overpayment of franchise tax for the taxable year 1941 in the amount of \$183.50 tax and \$181.72 interest and that there is due as interest on said overpayment of tax the sum of \$26.13, the total refund for said year being \$391.35; and it is hereby ordered that said sums of \$7,900.55 and \$391.35 be credited on any amounts due under the Bank and Corporation Franchise Tax Act from said Tide Water Associated Oil Company and that the balance be refunded to it. In all other respects the action of the said Commissioner is hereby sustained.

Done at Santa Rosa, California, this 3rd day of June, by the State Board of Equalization.

Wm. G. Bonelli, Chairman
George R. Reilly, Member
J. H. Quinn, Member
Jerrold L. Seawell, Member

ATTEST: Dixwell L. Pierce, Secretary